Supreme Court, U.S.
FILED
MAR 25 1997
OFFICE OF THE CLERK

(2)

No. 96-1384

In The

Supreme Court of the United States

October Term, 1996

PATRICK T. MURPHY,
Cook County Public Guardian, as Discharged Guardian
of the
Estate and Person of John F. Wellman,
a Disabled Person, Deceased,

Petitioner,

v.

SAMUEL H. YOUNG, An Interested Person and
SAMUEL H. YOUNG, Executor of the Estate
of John F. Wellman, Deceased,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

BRIEF OF RESPONDENT SAMUEL H. YOUNG, AN INTERESTED PERSON, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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15 pp

QUESTION PRESENTED FOR REVIEW

Petitioner's "Question Presented for Review" is faulty, fails to mention that Murphy was discharged as guardian of Wellman on July 3, 1991, that at all relevant times, Wellman had no living relatives, and that Wellman died on August 17, 1991.

RESPONDENTS BRIEF IN OPPOSITION

Respondent, Samuel H. Young, an Interested Person, requests this Court to deny the Petition for Writ of Certiorari to review the Opinion of the Supreme Court of Illinois, entered October 18, 1996 (Petition, Appendix A). Such Opinion held that the Petitioner, Patrick T. Murphy, Public Guardian of Cook County ("Murphy") had no "legal standing" to appeal the Final Judgment Order entered by the Probate Court June 3, 1991 ("FJO"), restoring John F. Wellman ("Wellman"), since Murphy had been discharged as plenary guardian of Wellman on July 3, 1991, and Wellman subsequently died on August 17, 1991.

OPINIONS BELOW

Petitioner's recitation of "Opinions Below" omits the FJO entered June 3, 1991 restoring Wellman to legal capacity and denying Murphy's petition to revoke the broad durable power of attorney Wellman had executed in December, 1988, designating Samuel H. Young ("Young") as his agent. (*Illinois Power of Attorney Act*, Ill.Rev.Stat. 1987, Chp. 110½, § 802-1, et seq.) The Findings of Fact and Conclusions of Law of the FJO are contained in Respondent's Appendix A.

PETITIONER'S STATEMENT OF THE CASE IS FAULTY

Petitioner's Statement of the Case fails to describe Murphy as a discharged guardian attempting to appeal the restoration of a deceased former ward (Wellman), who had no living relatives and had executed a valid, general durable power of attorney designating Young as

his agent with full authority to act for Wellman, whether capable or incapable.

PETITIONER'S STATEMENT OF FACTS IS FAULTY

Petitioner's Statement of Facts set forth statements in the section entitled, "Preface" that are not factual and are false. There are no record citations in support.

At an *ex parte* hearing on May 8, 1990, the probate court adjudicated Wellman a disabled person and appointed Murphy as plenary guardian. Wellman was not present and no excuse for his absence was given as required by the *Illinois Guardians For Disabled Adults Act* (GDA), § 11a-11(a) (Ill.Rev.Stat. 1991, Chp. 110½, Article XI A, § 11a-11(a)). Nor was notice given to Young, as Wellman's attorney and agent under a durable power of attorney, or to Maryhaven, Inc., the facility where Wellman was residing, as required by the GDA, § 11a-10(b). Similarly, there was no disclosure of Wellman's durable power of attorney and attorney-client relationship with Young (Vol. 9, page 2, Record on Appeal, Report of Proceedings). Finally, the adjudication was not based on a "clear and convincing" evidence standard, but was based on a mere preponderance of the evidence standard as permitted by the GDA, in violation of the due process requirements of the U.S. Constitution. *Addington v. Texas,* 441 U.S. 418 (1979).

During the trial, Murphy testified he did not sign the Petition to adjudicate Wellman disabled, filed on March 30, 1990, which purported to be a verified signature of Murphy, with a notarization indicating Murphy executed same (Supp. Record on Appeal, Vol. 4, 2125 and 2126).

The FJO of June 3, 1991 held that Young disclosed all pertinent facts concerning the joint tenancy arrangements with Wellman; that Wellman had sufficient experience and advice from others concerning the joint tenancy arrangements before entering into such transactions; that Wellman understood the nature and consequences of placing his property in joint tenancy with Young; that Wellman had the requisite mental capacity to enter into the transactions; that Wellman acted freely and voluntarily in establishing the joint tenancy; that Young had not withdrawn, received, nor been paid any money from the joint tenancy accounts; that it was Wellman's intent and desire to continue Young as his agent under a durable power of attorney; that his joint tenancy arrangements with Young remain undisturbed; and that Young had proved by clear and convincing evidence such facts rebutting any presumption of fraud and undue influence. *See*, Appendix A, Final Judgment Order of June 3, 1991, Findings of Fact and Conclusions of Law, ¶¶ 22-32.

The FJO, Findings of Fact and Conclusions of Law, Appendix A, ¶ 14, held that during the period from November, 1989 through May 8, 1991 (the last day of trial), Wellman was fully competent and not disabled. The probate court thus held that Wellman was never incompetent nor disabled during the period of the guardianship from May 8, 1990 through June 3, 1991. The GDA, § 11a-20(a) (Ill.Rev.Stat. 1991, Chp. 110½) required proof by "clear and convincing evidence" that Wellman was entitled to termination of the guardianship. Wellman met this standard.

Petitioner's statement that "Robert Downing ("Downing"), an attorney acting in concert with

Young, . . . " is false, without support in the record, and contrary to fact. Downing is a former judge of the Circuit Court of Cook County, Illinois, and a retired justice of the Appellate Court of Illinois, who was employed by Wellman and appointed by the Court. Both Downing and Young had professional obligations to represent the wishes and desires of Wellman.

THE PETITION IS WITHOUT MERIT AND SHOULD BE DENIED

Petitioner Murphy erroneously seeks to equate his status in the Wellman proceedings and litigation with the status of children of the alleged incompetent *Dombrowski. People ex rel. Dombrowski v. O'Connell,* 378 Ill. 346, 38 N.E. 2d 40 (1941). The children appealed the Probate Court's denial of their petition for appointment of a guardian to the Supreme Court of Illinois which held that, as next of kin, the children would be liable for the support of Dombrowski if his estate was wasted, and that they had legal standing to appeal the denial of the petition for the appointment of a conservator.

Unlike Dombrowski's next of kin, Murphy, a discharged guardian of Wellman, had no interest as next of kin of Wellman, had no interest as a creditor of Wellman, and had no potential liability to support Wellman, if Wellman wasted his estate. Murphy had no legally recognizable interest in the restoration of Wellman and with respect to the estate of Wellman, deceased. Murphy's position was adverse to Wellman. Wellman had a United States Constitutional right, as a restored free citizen, to make his own decisions as to his person and property.

Murphy, petitioner, had no right to make decisions for Wellman. *Board of Regents v. Roth*, 408 U.S. 564, 572, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972).

Petitioner erroneously argues the holding of this Court in *Lindsey v. Normet*, 405 U.S. 56 (1972), that an Oregon statute requiring an appealing tenant to file a bond, double the amount of an appealing landlord, somehow supports the right of a discharged former guardian of a deceased former ward to appeal the restoration of the ward. No issue of standing was involved in *Lindsey*.

CONCLUSION

There is no important question presented by the October 18, 1996 Opinion of the Supreme Court of Illinois. The judgment of the Supreme Court of Illinois rests on adequate, non-federal grounds. *U.S. ex rel. Pascal v. Burke*, D.C. Pa. 1950, 90 F.Supp. 1968.

The Petition of Murphy misstates the facts, misstates the law, is without merit, and ought to be denied.

Respectfully submitted,

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APPENDIX A – FINDINGS OF FACT AND CONCLUSIONS OF LAW IN FINAL JUDGMENT ORDER OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS PROBATE DIVISION ESTATE OF JOHN F. WELLMAN CASE NO. 90P03251 ENTERED JUNE 3, 1991

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That John F. Wellman (principal), a disabled person, executed an agency agreement on December 27, 1988 giving Samuel H. Young (agent), a durable power of attorney. Samuel H. Young owes a fiduciary duty to John F. Wellman.

2. That the petition to revoke the aforementioned agency is brought pursuant to Ill. Rev. Stat. Ch. 110-1/2, §802-9 and §802-10, and known as the "Illinois Power of Attorney Act".

3. That Petitioner, Patrick T. Murphy, Plenary Guardian of John F. Wellman, is an "interested person" with legal standing to petition for revocation of the durable power of attorney executed by John F. Wellman.

4. That Petitioner, Patrick T. Murphy, Plenary Guardian of John F. Wellman, has the burden to show by competent evidence that Samuel H. Young's agency should be revoked pursuant to Ill. Rev. Stat. Ch. 110-1/2, §802-9 and §802-10.

5. That Samuel H. Young and John F. Wellman entered into an agreement dated December 1, 1989, as evidenced by two letters of the same date, the terms of which were that in consideration of Samuel H. Young's assisting John F. Wellman in caring for his person and managing his property, John F. Wellman would place his

property in joint tenancy with Samuel H. Young with a right of survivorship. However, John F. Wellman restricted the use of his assets and income to his own use and benefit during his lifetime.

6. That Samuel H. Young also agreed as part of the December 1, 1989, agreement, that John F. Wellman could make a will and revoke the joint tenancies at any time. Also, that John F. Wellman could provide for gifts to others at his death and that the gifts would be paid by Samuel H. Young from the assets held in joint tenancy.

7. That the terms of the agreement were definite and certain and a contract clearly was established.

8. That at the time of the aforementioned agreement, a fiduciary relationship existed between Samuel H. Young and John F. Wellman based upon the parties attorney-client relationship and principal-agent relationship.

9. That the agreement to establish the joint tenancies is presumptively valid, and the party seeking to sever such joint tenancy agreements and accounts has the burden of establishing by clear and convincing evidence, that no gift was intended. See, *Murgic v. Granite City Trust & Savings Bank,* 31 Ill. 2d 587, 202 N.E. 2d 470 (1964).

10. That the mere fact that a donee of a joint tenancy is in a fiduciary capacity with the donor, it alone does not serve to rebut the presumption of donative intent. Instead, when a donee is in a fiduciary relationship with the donor, the transaction may be severed or revoked only upon proof of facts from which the court may infer that the donee abused or betrayed his position of confidence with the donor. *In re Estate of Wilkenning,* 109 Ill.

App. 3d 934, 441 N.E. 2d 1 (3rd Dist. 1971), *In re Estate of Foster*, 104 Ill. App. 2d 447, 44 N.E. 2d 620 (5th Dist. 1969).

11. That notwithstanding the aforementioned conclusion of law, a presumption of fraud and undue influence has been raised due to the fiduciary relationship between Samuel H. Young and John F. Wellman that existed at the time of the transaction. The burden is on the respondent, Samuel H. Young to present clear and convincing evidence to rebut the presumption of fraud and undue influence. *Estate of Wessels v. Burros*, 203 Ill. App. 3d 1080, 561 N.E. 2d 1212 (1990).

12. That Dr. Mark Amdur's diagnosis of manic psychosis, grandiosity and organic mood syndrome was refuted by the evidence, but not his diagnosis of mild dementia.

13. That the evidence proved that in Evanston Hospital in November, 1989, John F. Wellman suffered from mild dementia; paranoia as to his fear that people were trying to steal his money and as to his health; periodic episodes of confusion and anxiety; and, severe anemia that necessitated periodic blood transfusions; and, that he continued in this condition through May 8, 1990 and May 8, 1991, the date of the hearing on his petition to be restored.

14. That from November, 1989 through May 8, 1991, the evidence proved that John F. Wellman who was ninety years of age was substantially oriented to time, place and person; that he was aware of the persons present and the circumstances of their being with him; that he was sociable and wanted to converse though he considered himself a loner; that he could read and knew

what he read; that he has a severe hearing problem; that he understands questions when he can hear them; that he answers questions both orally and in writing and that his responses are appropriate to the questions asked; that he is aware of the amount of his assets and of the nature of his investments; and that he knows what he is about in controlling his investments and in the location of his assets.

That due to his aforesaid conditions John F. Wellman, becomes tired, exhausted and lapses into confusion or dementia and his communication begins to ramble and become meaningless. That haldol therapy has helped. That the extent of his dementia varies due to his anemia and blood transfusions.

15. That John F. Wellman is aware and knows that he has no heirs and no will or trust, and, that without acting to direct the disposition of his estate, the State of Illinois would receive his assets.

16. That John F. Wellman has the mental capacity and ability to communicate with his doctor, to understand his mental and physical conditions, and make responsible and appropriate decisions concerning his health care.

17. That John F. Wellman has the mental capacity and ability to make and communicate responsible decisions concerning the control, investment and management of his financial affairs and the disposition of his estate.

18. That it was not proved by even a preponderance of the evidence that John F. Wellman has the ability or

capacity to perform the tasks necessary for the routine care and safety of his person or for the tasks incidental to the paying of bills, writing checks, making purchases and managing his estate at that level of performance.

19. That the evidence proved that John F. Wellman a partially disabled person who lacks some but not all of the capacity as specified in Ill. Rev. Stat. Ch. 110-1/2, §11a-3 and, therefore, is entitled to the appointment of a limited guardian of the person and estate. Ill. Rev. Stat. Ch. 110-1/2, §11a-12(c).

20. That the purpose of the Durable Power of Attorney Act is that "each individual has the right to appoint an agent to deal with property or make personal and health care decisions . . . throughout the principal's lifetime, including periods of disabilities . . . " Ill. Rev. Stat. Ch. 110-1/2, §802-1.

21. That an attorney is not prohibited from dealing with his client, and transactions, if open, fair and honest when deliberately made, are valid. Factors used in determining whether a transaction is fair include a showing by the fiduciary (1) that he made a full and frank disclosure of all the relevant information he had; (2) that the consideration was adequate; and (3) that the principal had independent advice before completing the transaction. *McFail v. Braden,* 19 Ill. 2d 108, 166 N.E. 2d 46 (1960); See also *In re Barrick,* 87 Ill. 2d 233, 429 N.E. 2d 842 (1981); *Franciscan Sisters Health Care v. Dean,* 95 Ill. 2d 452, 448 N.E. 2d 872 (1983).

22. That Samuel H. Young disclosed all pertinent facts concerning the joint tenancy arrangements with John F. Wellman. See, *McFail,* Supra.

23. That John F. Wellman had sufficient experience as an accountant and non-legal independent advice given to him by bank employees Paul Larson and Andy Vlahos, and, Wallace Johnson, a stock broker and financial consultant, concerning the joint tenancy arrangements before entering into the transactions. See, *Barrick,* Supra; *Franciscan Sister,* Supra.

24. That John F. Wellman understood the nature and consequences of placing his property in joint tenancy with Samuel H. Young with right of survivorship. That John F. Wellman had the requisite mental capacity to enter into the transactions. See, *Estate of Galvin,* 112 Ill. App. 3d 677, 445 N.E. 2d 1223 (1983).

25. That John F. Wellman acted freely and voluntarily in establishing said joint tenancies.

26. That the consideration for said agreement was adequate and valuable, and therefore sufficient consideration to establish a contract between the parties. See, *McFail,* Supra.

27. That Samuel H. Young has not withdrawn, received and has not been paid any monies from the said joint tenancies. That Samuel H. Young has provided the services for John F. Wellman as set forth in their December 1, 1989 agreement.

28. That it is John F. Wellman's intent and desire that Samuel H. Young continue as his agent under a Durable Power of Attorney and that his joint tenancy arrangements with Samuel H. Young remain undisturbed.

29. That accordingly, Samuel H. Young has sustained his burden of presenting clear and convincing

evidence to rebut the presumption of fraud and undue influence. Consequently, the presumption no longer exists.

30. That petitioner now has the burden to prove by a preponderance of the evidence that Samuel H. Young committed acts of undue influence and fraud and that the joint tenancy agreements and accounts were procured as a result of said acts. *Franciscan Sisters,* Supra.

31. That petitioner has not sustained his aforementioned burden of proof.

32. That this court finds that Samuel H. Young has not breached his fiduciary duty to John F. Wellman by entering into an agreement with him on December 1, 1989 to place John F. Wellman's property in joint tenancy with a right of survivorship.

33. That Petitioner has failed to prove by a preponderance of the evidence that John F. Wellman lacks the capacity to control or revoke Samuel H. Young's agency. This court finds that John F. Wellman is indeed capable of controlling or revoking the agency.

34. That the petitioner has not proven by a preponderance of the evidence that Samuel H. Young has not acted for the benefit of John F. Wellman in accordance with the terms of the durable power of attorney.

35. That the petitioner has not proven by a preponderance of the evidence that Samuel H. Young's action or inaction has caused or threatens substantial harm to John F. Wellman's person or property.

36. That for the aforementioned reasons, petitioner has failed to sustain his burden of proof that Samuel H.

Young's agency should be revoked pursuant to Ill. Rev. Stat. Ch. 110-1/2, §802-9 and §802-10.

FINAL JUDGMENT ORDER

IT IS HEREBY ORDERED that the Petition to Revoke the Agency of Samuel H. Young under a Durable Power of Attorney executed by John F. Wellman on December 27, 1988, and, to declare null and void an agreement executed on December 1, 1989 by John F. Wellman with Samuel H. Young filed on July 24, 1990 be and is hereby dismissed.

IT IS FURTHER ORDERED that the Petition of John F. Wellman to be Restored, or to Vacate, Modify or Terminate the order of Adjudication entered on May 8, 1990, is hereby granted in favor of John F. Wellman and the Order of Adjudication of May 8, 1990 be and is hereby terminated.

IT IS FURTHER ORDERED that the order freezing the joint tenancy assets entered on May 24, 1990 be and is hereby vacated.

There is no just reason to cause the delay or immediate enforcement of this Final Judgment Order.

ENTER:

_____

ROBERT D. ERICSSON
JUDGE JUDGE'S NO.

DATED: _____

_____